SUPREME COURT

OF THE UNITED STATES.

Clerk Supreme Court, U. S.
FILED
SEP 20 1898
JAMES H. McKENNEY,
CLERK.

ANDERS JAKOBSEN,
Claimant of the Norwegean steamship Albert Dumois,
Appellant,

vs.

OSCAR M. SPRINGER, et als,
Appellees.

OSCAR M. SPRINGER,
Appellant.

vs.

ANDERS JAKOBSEN,
claimant, et als,
Appellees.

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PETITION FOR A WRIT OF CERTIORARI.

RICHARD DEGRAY,
Proctor for Petitioner.

DETROIT:
CHAS. M. ROUSSEAU & SONS, PRINTERS, 40-44 WEST LARNED STREET
1898.

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ANDERS JAKOBSEN,
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PETITION FOR A WRIT OF CERTIORARI.

The petition of Oscar M. Springer, of Detroit, Michigan, sole owner of the late steam yacht Argo, for a writ of certiorari, directed to the United States Court of Appeals for the Fifth Circuit, to bring before the Supreme Court the case of Anders Jacobsen, claimant of Norwegian steamship Albert Dumois, appellant, against Oscar M. Springer et al., appellees; and Oscar M. Springer, appellant, against Anders Jacobsen et al., appellees.

To the Honorable Judges of the Supreme Court of the United States:

The said petitioner respectfully shows to this Court as follows:

That said yacht Argo lies sunk on the bottom of the Mississippi River, about 500 feet from its western bank (R. pp. 110-114), at a point about 80 miles below the City of New Orleans (R. p. 26), and is a total loss. The river at this place is straight, is 2,400 feet wide, and has deep water from bank to bank (Chart Miss. Riv. Commission).

This sinking and loss was the result of a collision, which occurred on a clear, starlight night, between the hours of 12 o'clock p. m. of January 27th, 1897, and 1 o'clock a. m. of January 28th, 1897, between said steam yacht Argo, bound on a trip from the City of New Orleans to the jetties at the mouth of the South Pass of said river, and said steamship Albert Dumois, which was proceeding to the City of New Orleans. With the sinking of said Argo occurred the death of the late Faure Bourgenois de Blesine and the late Harrison P. Hester.

On the 28th day of January, 1897, libel was filed by said Springer in the United States District Court for the Eastern District of Louisiana, in rem, against said steamship (R., p. 1), claiming said collision was solely caused through the fault of said Dumois and claiming damages to the extent of $40,000, and an intervening libel was filed by the crew of said Argo, respectively, claiming damages for the loss of their respective effects lost in said sinking (R. p. 5); and thereupon said Anders Jacobsen appeared and claimed the said Albert Dumois as sole owner thereof (R. p. 8). And thereafter Marie B. Bourgenois de Blesine, the mother of said Faure de Blesine (as the party duly authorized under the jurisprudence of Louisiana to bring such suit), filed a libel in personam against said Anders Jacobsen, claiming the loss of her son was solely caused through the fault of said Dumois, and damages to the extent of $20,000 (R. p. 12).

Thereafter said Jacobsen filed his petition claiming the benefit of the limited liability provided for in the Act of Congress of March 3d, 1851, and in Section 4263 of the Revised Statutes of the United States (R. p. 9), under which the Dumois and her pending freight were appraised (R. p. 12), the vessel released on bond (R. p. 17), and further proceedings against said vessel, freight, and her owner were enjoined (R. p. 11); and thereafter

monition was published directing all persons claiming damages to appear before a Commissioner duly named and make proof thereof, and enjoining proceedings against said steamship and her owner (R. p. 20); and thereafter, by agreement of proctors, said libel in personam of said Mrs. de Blesine was filed and treated in said limited liability proceedings as an answer to said proceedings (R. p. 16). And at a still later date Mrs. Genevive Keplinger Hester, as widow of said Harrison P. Hester, filed claim under said monition, alleging his death was solely caused through fault of said Dumois, and claiming damages at $20,000 (R. p. 30).

At at still later date claimant of the Dumois filed an amended petition in more amplified form, giving the facts of the case as claimed by him, and again praying the benefit of said limited liability laws (R. p. 25), to which Springer filed an extended answer, stating the facts as claimed by him, and among other things in said answer, surrendered the wreck of said Argo and claim for charter money for the trip or voyage on which she was lost, and prayed for the recovery of the value of said Argo as in his libel set forth (R. p. 36), the substance of which amended petition and the answer thereto is given at the end of this petition and the same is made part hereof.

And at a subsequent date Springer again made a formal surrender of the wreck of said Argo and said claim for charter money for said voyage or trip on which she was lost (R. pp. 42 and 43). After the evidence was fully taken the case was heard by the District Court, whose opinion was oral, but delivered in the presence of proctors of all parties, and was to the effect that when the vessels first came in sight of each other the Argo was descending the river in the usual and proper course for a descending steamer, in the middle of the river, and the Dumois was ascending said river toward the eastern bank thereof and about 400 or 500 feet distant therefrom; that the Argo gave the first signal of one blast of her whistle to pass to the right of said Dumois—which was proper—and said Dumois wrongfully crossed signal with two blasts of her whistle, starboarded her helm without any reason for a departure from the "rule of the road" (Rev. Stat. U. S., Sec. 4233), and crossed the course of said Argo, notwithstanding said Argo again gave a signal blast of her whistle, still claiming her right to pass to starboard, and ported her helm to go to the westward, when said Dumois replied with her danger signal, continuing her course in front of said

Argo, causing the latter to strike her on her starboard bow, from which she sank in a few minutes, and said Hester and said Blesine to be drowned, and thereafter said Dumois continued her course up the river until she disappeared from sight, and decreed said collision was solely caused by the fault of the Dumois, and awarded to libellant Springer $11,000 for the loss of said Argo, $5,000 to Mrs. Hester, $2,500 to Mrs. Blesine, and to the crew of the Argo the resepctive sums by them claimed (R. p. 309).

From this decree claimant of the Dumois appealed to the United States Circuit Court of Appeals for the Fifth Circuit, assigning in substance, as error, that said collision was caused through the sole fault of the Argo, and that the amount awarded as her value was excessive (R. pp. 310 to 313).

An appeal was also taken by Springer, claiming the amount awarded him as the value of the Argo was too small (R. pp. 316 to 319), but no appeal was taken by Mrs. Hester or Mrs. Blesine, nor by the crew of the Argo, who were awarded the amounts claimed.

The United States Circuit Court of Appeals in part sustained both appeals, decreeing the damages sustained by Springer in his loss of the Argo were $15,000, and those sustained by the Dumois were $185, and that the collision was caused by the mutual fault of both vessels, and that said damages should be divided, and adjudged that Mrs. Hester recover from the principal and surety on the release bond $3,000 as widow and $2,000 as tutrix to her minor child; that Mrs. Blesine recover from said parties $2,500, the crew of said Argo one-half of the damages by them respectively sustained, and that O. M. Springer, owner of the steamship Argo, do have and recover of said Anders Jacobsen, claimant, and Isadore Newman, surety, in solido, the sum of $7,500, subject to a credit of $92.50 in favor of said Anders Jacobsen and Isadore Newman for one-half of the damages sustained by the Dumois, and to a credit of one-half the amounts hereinbefore decreed in favor of Mrs. Hester and Mrs. Blesine, all of which credits aggregate the sum of $3,842.50, leaving a balance due on this decree in favor of said O. M. Springer, claimant, of the sum of $3,657.50, and that said Springer have execution only for said sum of $3,657.50" (R. pp. 323 and 324).

Of this decree petitioner complains as follows: (1) Because it holds the Argo mutually in fault with the Dumois in causing said collision. (2) Because it directs that claimant of said Du-

mois is entitled to deduct one-half of what he is adjudged to pay Mrs. Hester and Mrs. Blesine from the half damages first decreed to him as half the value of the Argo, and this in the face of the fact that petitioner made surrender of the Argo's wreck and claim for freight in his answer to the aforesaid amended petition (as was done in the case of the Scotland, 105 U. S., p. 24), and again formally surrendered her with all sums due her on the trip on which she was lost, for the benefit of all parties in interest. (3) Because said decree does not increase the value of said Argo to at least $20,000. (4) In case the above should be found untenable, then petitioner says there was nothing for said Court of Appeals to base its decree upon, as there were no facts found by the District Court. Wherefore, for the reasons more fully discussed in a brief herewith filed, and supported by the authorities therein cited, petitioner prays that this Honorable Court will be pleased to grant a writ of certiorari in this case to the United States Circuit Court of Appeals for the Fifth Circuit, to bring up this case to this Honorable Court for such proceedings as shall be proper and just, and for such other and further relief and redress as to right and justice shall seem proper and as the Court is competent to give in the premises.

RICHARD DE GRAY,
Proctor for Petitioner.

UNITED STATES OF AMERICA.
Eastern District of Michigan.
County of Wayne—ss.:

Oscar M. Springer, of Detroit, Michigan, being duly sworn, deposes and says that he has read the foregoing petition and that the same is true to deponent's knowledge, information and belief, and his knowledge is derived from familiarity with the facts therein stated.

OSCAR M. SPRINGER.

Subscribed and sworn to before me this 18th day of August, 1898.

WILLIAM LOOK,
Notary Public, Wayne County, Mich.

I hereby certify that I have examined the foregoing petition and in my opinion said petition is well founded and that the case is one in which the prayer of said petition should be granted.

RICHARD DE GRAY,
Proctor.

SUBSTANCE OF AMENDED PETITION OF CLAIMANT OF THE STEAMSHIP DUMOIS, PRAYING FOR THE BENEFIT OF THE LIMITED LIABILITY ACTS OF CONGRESS, AND OF THE ANSWER OF LIBELLANT THERETO, REFERRED TO IN THE FOREGOING PETITION FOR CRTIORARI, AND MADE PART THEREOF.

Said amended petition stated in substance as follows: (1) That said Dumois, while proceeding on a trip from Port Limon, Costa Rica, to New Orleans, came in collision with the Argo. (2) That said Dumois was properly manned and equipped, etc. (3) That at the time of said collision said Dumois had arrived at a point 80 miles below New Orleans and was proceeding as close to the east bank as it was safe to go, when her lookout, pilot and second mate discovered the lights of a steamer coming down said river close to said eastern shore, "head and head" and a little to the starboard, when the Dumois's lights were burning brightly; and that on discovering said lights—which were those of the Argo—and before any signal had been given by her, said Dumois gave two distinct blasts of her whistle, indicating that she desired to pass the Argo to her left, starboard to starboard, and put her wheel to starboard; that the Argo wrongfully crossed said signal with one blast of her whistle, and then said Dumois immediately repeated her signal and immediately thereafter caused three or more short blasts to be blown to indicate danger, and stopped and backed, but that said "Argo wholly neglected to stop her engines and back, but kept her course and speed until her pilot saw the green or starboard light of the steamship, when he attempted to pass ahead of her by putting his wheel hard aport, which brought the Argo in collision with the steamship, striking her at right angles on her starboard side about 10 feet abaft the stem, from which collision the Argo sank in a few minutes and became a total loss." (4) That the

Argo carried no masthead light, but that all her lights were on the pilot house, the colored on the respective sides and the white light on the forward end of the pilot house, all at the same height and so few feet above the water, which gave them the appearance of being at a greater distance off than they actually were, "tending to mislead (not that they did mislead) an approaching vessel." (5) That owing to the above location of the lights they were not visible until she cleared the tug Day Dream and her tow of luggers coming to landing on the west bank half a mile above the steamship, which compelled her at the time of the first signal to pull from the bank to clear them, as she could not safely go between them and the bank or go closer to the bank, which the pilot of the Argo must have known, as he had just passed the tug and luggers. (6) That the Argo was on the east side of the river, out of her proper course for descending vessels, which was in the middle of the river, and was running at the dangerous speed of 18 or 20 miles an hour, and that her sudden appearance after the clearing of the tug and luggers at a distance of less than half a mile put the steamship in such extreme peril that her pilot was compelled to take instant action to avoid the collision, but the pilot of the Argo made no effort to avoid it by stopping the Argo's engines and backing her or by keeping her course or putting his wheel to starb'd. (7) That the Argo was not sufficiently officered and manned, the only deck officer being Brown, who acted as master, pilot, mate, wheelman and lookout, and that, owing to the multiplicity of his duties he did not give proper attention to the navigation of his vessel. (8) That the lacking of two men to complete the crew for this trip to the jetties, the master took Hester and Blesine, who were not seamen; that said Hester took the management and had charge of the Argo for the New Orleans Picayune, which had chartered her for the voyage, and as such had the right to give all orders, both of whom were drowned. (9) That the said collision was in no way caused by the fault of said steamship and was caused by the fault of the owner of the Argo and said Hester in not properly manning her, and by those charged with her navigation. (10) That though said collision occurred without fault, privity or knowledge of said petitioner, Springer, as owner of said Argo, has libeled the Dumois, claiming $40,000 damages, and the mother of said Blesine has filed a libel in personam claiming $20,000 on account of his death, and the wife of said Hester threatens to file libel claiming damages for his loss of life, and the crew of said Argo have intervened and claimed

various small amounts (which are mentioned), and petitioner fears other claims will be made. (11) That under the circumstances petitioner desires to obtain the benefit of Sections 4283, 4284 and 4285 of the United States Revised Statutes and amendments thereof and supplements thereto, and to contest his liability and that of said steamship to any loss or damages resulting from said collision. (12) That for the purpose of obtaining the benefit of the above limited liability law offers stipulation for the value of said steamship and her pending freight for the benefit of those who have sued and those who may hereafter sue, etc. And affirming the prayer of his original petition, and that he may have the benefits of all proceedings theretofore had, further prayed that the Court decree said steamship was not in fault in causing said collision, and that all claims asserted or brought against him and said steamship may be rejected with costs; but in case it should be decided both vessels were in fault, that the damages done said Dumois be allowed as an offset against any sum allowed in favor of libellant to the extent claimed in his answer to the libel filed herein, and that in case full damages should be awarded against said steamship in favor of the intervening libellants and the legal representatives of said Blesine and said Hester, that then the said Oscar M. Springer may be decreed liable for one-half of all such damages, and that any judgment he might recover against petitioner and his said steamship may be decreed to be compensated and extinguished to that extent, and for general relief.

To the original and the foregoing amended petition the libellant Springer, in substance, responded as follows: (1) Admitted said collision did occur in the river at the place stated. (2) Denied said steamship Dumois was properly manned and equipped, and averred her officers and crew were unskillful and negligent. (3) Admitted that prior to the said collision said Dumois was coming up the Mississippi River, but about 450 or 500 feet from its eastern bank, at 10 miles an hour; and denied that her lookout, or mate, or anyone else, discovered the lights of the Argo close to the east bank of said river, or to the starboard of said Dumois; denied that said Dumois had a proper lookout forward, that there was a competent pilot and mate on the bridge keeping a vigilant lookout; denied that before any signal was given by said Argo two distinct blasts of said Dumois's whistle were given; denied that said Argo wrongfully crossed the signals of said Dumois, or crossed her signals at all, and averred that said Argo was going down said river at the point stated in

her proper place in the middle of the river, and when she had reached a point three-quarters of a mile distant her master and pilot (who was steering), and her lookout on watch, noticed the red and white lights of a steamer ascending said river in the proper place for such ascending vessel, and when she had approached within about half a mile of the Argo, still in the middle of the river, and before said Dumois had given any signal whatever, said Argo gave one distinct blast of her whistle, indicating she would keep her course and pass on said Dumois's left, when, not heeding said Argo's signal, said Dumois crossed the same with two blasts of h[illegible] whistle, crossed the stream and the course of said Argo, shut out her red and showed her green light; that immediately upon said Argo's signal being crossed, said Argo again blew one blast of her whistle and put her helm hard aport to go wide clear of said Dumois, as in the judgment of her master and pilot it was best for all for her to do, but said Dumois continued and blew her danger signals, but only a second or two before the Argo struck her on her starboard bow, and thereafter said Dumois continued her course up the river for half a mile or more before she stopped, going rapidly past the Argo, which sank in four minutes, becoming a total loss and causing the death of Hester and Blesine, but no damages were done to said Dumois. (4) Admits said Argo carried no masthead light, and that her lights were on the pilot house, but denied they were on the same plane and that they were only a few feet above the water, and that they were misleading, and averred they were in all things the proper lights for a vessel of the Argo's class and placed according to law, and were burning brightly. (5) Denied the lights of the Argo were not visible until she had cleared the tug Day Dream and luggers landed on the east bank of the river half a mile above said Dumois; denied said Dumois was compelled to pull out from said eastern shore to clear said luggers, and averred that if said Argo's lights were not seen it was the fault of the pilot of said Dumois; that there was fully 300 feet between the course of said Dumois and said luggers, which were landed at the eastern shore, and that at the time the course of the Argo was to the westward of that of said Dumois and in the middle of the river, and had said steamship not wrongfully left said eastern shore and crossed the Argo's course no collision would have been possible. (6) Denied the Argo was on the eastern side of the river and out of her course in the middle of the river, and that her speed of 18 miles an hour was dangerous or excessive; denied that her appearance was sudden and

that she could not plainly and distinctly have been seen on that clear, starlight night a distance of less than half a mile; denied that said Dumois was at any time put in extreme peril by any action or fault of the Argo, and that her pilot was compelled to take instant action to avoid collision, and averred through want of skill the pilot of the Dumois took just the action to bring about the collision that did occur, by refusing to heed the two separate signals of one blast of said Argo's whistle, and crossing her signals and course, as already described; all of which was sudden, wrong and unanticipated, and put the Argo in extreme peril, and the judgment of her master and pilot in this situation was that the very best thing he could do, owing to the speed with which he was going with the current, and owing to the fact that the Argo could not be stopped and backed in less than 10 minutes, was to put his helm hard aport, proceed with full speed and pass in front of said Dumois, and this would have been successful had said Dumois, after wrongfully crossing the signals and course of the Argo, stopped when she blew her danger signals; that at the time the lights of the Argo were burning brightly and were visible more than two miles, and if not seen at less than half a mile, as alleged, it was solely due to the insufficient lookout. (7) Denied that said Argo was not sufficiently maned; denied she did not have a skillful and competent lookout on duty; denied that there were any duties that rendered Brown (the Argo's master and pilot) incompetent to give, and that he did not give, proper attention to the direction and steering of said Argo; and averred said Argo was not a large, ocean-going steamer, but a small pleasure yacht, 100 feet long and of 48 gross and 24 net tons burden, and only licensed to navigate lakes, harbors, sounds and rivers, and was engaged only on a short trip from New Orleans to the jetties and return, and said Brown was entirely competent to give and did in all things give proper attention to her navigation, and averred the full crew of said Argo was a master and pilot, one engineer and five crew, as her certificate of inspection will show, all of whom were on board of said yacht at the time, the said Hester and said Blesine acting as deckhands, for which they were competent. (8) Admitted said Hester and Blesine agreed to go and act as deckhands, for which they were competent; admitted said Hester had charge of the trip for the charterer with direction of said Argo, and that said Hester and said Blesine lost their lives. (9) Denied the collision was in no way caused by the fault of said Dumois, and averred it was solely caused by her fault, and

that she alone was responsible therefor and for the loss of said Argo and said Hester and Blesine. (10) Denied the collision happened and said loss and damage occurred without fault of the Dumois, and admitted the owner of the Argo had libeled the Dumois for $40,000 for her total loss, that Mrs. Blesine had filed libel in personam against the owner of the Dumois claiming $20,000 damages for the loss of her son, and that the other parties named had filed intervention claiming the amounts stated, for loss of personal effects. (11) Denied that said Dumois was entitled to the benefit of the limited liability provisions of the Revised Statutes of the United States. (12) Admitted the filing of said petition claiming the benefits of said provisions of said limited liability, and that said clamant had given bond for the value of said steamship and pending freight, and that she had been released.

And further answering said, that in case the Court should find said Argo was in any manner in fault in causing said collision, then he said that at the time thereof said Argo was under charter to The New Orleans Picayune Newspaper Co. to make a trip from the City of New Orleans to the jetties at the mouth of the Mississippi River and return for the price of $100, and was at the time under the management of said Hester, who was on board of her as said company's representative, no part of which had been paid, as said trip was broken up by said collision before the same was half completed, and that by said collision said Argo was sunk and completely lost; that there is no personal liability against respondent for any loss or damage to the Dumois, if any occurred (which is denied), nor to Mrs. de Blesine for the loss of her son, nor to said Mrs. Hester for the loss of her husband, nor to the other parties, nor was there any liability on the part of the Argo to said parties, or either of them, beyond the value of said Argo as she lies sunk at the bottom of the Mississippi River at said point of collision; and in and by said answer surrendered her as she lay sunk as aforesaid, any claim he might have for said charter money, for the benefit of all parties who may in any manner have any claim against him or the said yacht Argo, and prayed for damages as in his original libel set forth.